ATTORNEY FOR APPELLANT:

MICHAEL E. CAUDILL
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEPHEN R. CARTER
Attorney General of Indiana
Indianapolis, Indiana

MARJORIE LAWYER-SMITH
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

VONDREGUS BAILEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0702-CR-181
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Nancy L. Broyles, Judge
Cause No. 49G05-0212-FB-306918
49G05-0212-FB-311072
49G05-0301-FB-03842

DECEMBER 6, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Senior Judge

STATEMENT OF THE CASE

Vondregus Bailey ("Bailey") appeals from denial of his Petition for Post-Conviction Relief filed July 15, 2005. In his petition, Bailey sought relief from convictions upon his guilty plea and from the sentences imposed upon those convictions. We affirm.

ISSUE

Bailey raises one issue for our review, which we restate as: Whether the post-conviction court erred in determining that Bailey voluntarily, knowingly, and intelligently entered into a plea agreement.

FACTS AND PROCEDURAL HISTORY

Bailey pleaded guilty to a Class B robbery charge in Cause No. 306918 and to two separate and distinct robbery charges in Cause No. 311072. He also admitted to being a habitual offender under Cause No. 311072.[1]

The plea agreement stated:

> The parties will be free to argue an appropriate sentence as to the underlying counts; however, the parties agree that the Defendant shall not receive an initial executed sentence less than ten (10) years or an initial executed sentence greater than twenty-five (25) years. The Court may determine whether the sentences run concurrently or consecutive to each other. The Habitual Offender enhancement shall be applied to Count I

[1] Bailey also pleaded guilty to a charge of obstruction of justice in Cause No. 311072, but that conviction and concurrent sentence is not challenged.

> [the Robbery count] of Cause #02311072 and shall be a set term of fifteen (15) additional years in executed time. . . .

Appellant's App. at 50.

The Court sentenced Bailey in Class B robbery count No. 306918 to fifteen years with five years suspended and three years probation. On one of the Class B robbery counts in No. 311072, Bailey was sentenced to fifteen years with five years suspended, and that sentence was enhanced by the fifteen "additional years in executed time" as per the agreement.[2] On the other Class B robbery conviction in No. 311072, Bailey received a concurrent sentence of fifteen years with five years suspended.

Bailey asserts that his guilty plea was not voluntary, knowing and intelligent because "the transcript reflects confusion between the parties and the Court as to the application of the habitual offender sentence. Appellant's App. at 80.[3] The dispute appears to focus upon whether the twenty-five year limitation upon an "initial executed sentence" precludes an enhanced sentence by reason of a habitual offender determination

---

[2] In its denial of the petition for post-conviction relief, the court acknowledged that there was a scrivener's error in the plea agreement. The agreement recited that the additional fifteen year enhancement in Cause No. 3111072 was to be "applied to Count One of Cause #02311072." (Emphasis supplied). In point of fact, Bailey was not pleading guilty to the Class B robbery felony under Count One but rather was pleading to the Class B robbery felonies under Counts Four and Seven. The trial court had attached the habitual offender enhancement to the conviction under Count IV. In doing so, the trial court did not act inappropriately so as to prejudice Bailey. As noted, Counts One, Four and Seven were all for Class B robbery felonies. It was clear that Bailey was not pleading to Count One and attaching the habitual enhancement to Count Four was in conformity with the plain contemplation of the plea agreement.

[3] The alleged confusion is reflected by the transcript of the sentencing hearing conducted July 2, 2003. Because of the trial court's uncertainty as to the clarity of the plea agreement concerning sentencing, the hearing was continued and was re-conducted on July 15,2003. The plea agreement was filed May 29, 2003, the date upon which the court held the guilty plea hearing and on that date, the trial court accepted the guilty plea. It appears that Bailey's position is that because an internal inconsistency or lack of certainty with regard to the terms of the plea agreement concerning whether the ten to twenty-five year cap on the "initial executed sentence" precluded a habitual enhancement outside the cap, his plea should be vacated.

for a period in excess of the twenty-five year provision. At first glance, this issue may appear further clouded by the fact that the maximum sentence for an underlying Class B felony is twenty years, not twenty-five years. Ind. Code § 35-50-2-5. The dilemma, we find, was satisfactorily resolved by the sentencing court.

The court correctly read the specific provision relating to imposition of a habitual offender enhancement to be in addition to the "initial" executed sentence imposed upon underlying crime, not to exceed twenty-five years. Here, the court imposed a fifteen-year sentence upon the basic robbery B felony but suspended five of those years for an executed term of ten years. That sentence was enhanced by the agreed fifteen-year term for the habitual offender determination. Thus, the aggregate executed sentence upon that count did not exceed the twenty-five year cap contained in the agreement. That sentence was not inappropriate in that the sentencing court, in imposing a fifteen-year sentence, did not exceed the maximum twenty-year sentence for a B felony. The underlying sentence was for fifteen years without regard to the period of the sentence, which was suspended. The executed portion of that sentence, when coupled with the agreed fifteen-year additional term for the habitual offender determination, did not exceed the agreed cap of twenty-five years.

CONCLUSION

The sentencing court appropriately construed the plea agreement and entered sentences in conformity therewith. Accordingly, the post-conviction court was correct in denying relief.

Affirmed.

NAJAM, J., and DARDEN, J., concur.